

# Agenda

## Item #6



STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

To: Commission Members and Counsel

From: Jonathan Wayne, Executive Director

Date: June 20, 2008

Re: Proposed Policy on Paying Family Members

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At the April 28, 2008 Commission meeting, the staff presented to you with a preliminary draft policy on implementing two new laws relating to candidates who pay campaign funds to family members. At that meeting, you directed the staff to make changes to the draft policy. Later on April 28, I sent you an amended version of the policy for your consideration. I received further comments from Michael Friedman, Francis Marsano, and Mavourneen Thompson. The Chair commented first and suggested eliminating the concept that Commission members would pre-approve proposed expenditures to family members. Commission members Marsano and Thompson were satisfied with the amended version with the understanding that the staff would consider documentation submitted before the expenditure is made. I amended the draft advice to incorporate that change.

On May 12, 2008, I mailed copies of the current draft to interested persons. We have received comments from only one organization, the Maine Citizens for Clean Elections (MCCE). The co-chairs of the organization are Alison Smith and Ann Luther, who made a presentation at the April 28 meeting. The MCCE has concerns about any pre-approval of proposed expenses of campaign funds to family members because candidates might submit incomplete or misleading information to the Commission.

The staff had originally suggested pre-approval of expenditures for two reasons:

- First, we interpreted the language in 21-A M.R.S.A. § 1125(6-B) ("unless the candidate submits evidence to the Commission that the expenditure will be made") (emphasis added) to suggest that the candidate's submission of the evidence will precede the making of the expenditure.
- Second, we thought that if the goal of the new law is to discourage payments of Maine Clean Election Act funds to family members, that objective might be furthered by having the candidates submit the evidence before making the payments. As a result, the candidate would know that the expenditure will be scrutinized by the Commission staff and possibly be discussed at a public meeting before the election.

The staff is very comfortable with either pre-approval or consideration of the documentation after the fact. We have drafted a new version of the policy that includes two options for your consideration. All changes from the May 12 version are marked with shading.

In addition to these options, our new auditor, Sumner Field, proposed an additional variation: the documentation could be submitted to the Commission before the expenditure is made, but the evaluation by the staff could be conducted after the expenditure was made when the totality of the circumstances can be considered.

Thank you.



## **Policy on Paying Campaign Funds to Family Members**

This memorandum describes the policies and procedures regarding the use of campaign funds to pay a member of the candidate's family or household, which were established by the Maine Ethics Commission pursuant to statutory changes enacted during the First Special Session of the 123<sup>rd</sup> Legislature (P.L. 2007, c. 567 (eff. July 18, 2008) and c. 571 (eff. April 7, 2008)).

### **Disclosing a Payment to a Member of the Candidate's Family or Household (applies to gubernatorial, legislative, and county candidates)**

- *Traditionally financed candidates.* If a candidate makes a payment of campaign funds to a member of the candidate's household, the candidate must report the family or other relationship (e.g., "brother" or "roommate") in the remarks section of Schedule B (for expenditures) of the campaign finance report. (P.L. 2007, c. 567 (eff. July 18, 2008))
- *Maine Clean Election Act candidates.* If a candidate makes a payment of Maine Clean Election Act funds to a member of the candidate's "immediate family" (defined below), a member of the candidate's household, or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family or household relationship (e.g., "spouse," "domestic partner," "brother," "roommate," or "business owned by daughter") in the remarks section of Schedule B of the campaign finance report. (P.L. 2007, c. 571 (eff. April 7, 2008))

For purposes of this disclosure requirement, "immediate family" means the candidate's spouse, parent, grandparent, child, grandchild, sister, brother, stepparent, stepgrandparent, stepchild, stepgrandchild, stepsister, stepbrother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, guardian, former guardian, or domestic partner. 21-A M.R.S.A. §§ 1(20) & 1122(4-A))

### **New Restrictions for Maine Clean Election Act Candidates (21-A M.R.S.A. § 1125(6-B), enacted by P.L. 2007, c. 567 (eff. July 18, 2008))**

This new statute provides that Maine Clean Election Act (MCEA) candidates may not use public campaign funds to pay:

- the candidate
- a member of the candidate's household,
- or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest

**unless** the candidate submits evidence to the Commission that the expenditure will be made:

- for a legitimate campaign-related purpose,
- to an individual or business that provides the goods or services being purchased in the normal course of their occupation or business, and
- in an amount that is reasonable taking into consideration current market value and other factors the Commission may choose to consider.

### ***Timing of Submitting Evidence***

[Option 1: If a candidate intends to pay MCEA funds to an individual or entity covered by subsection 1125(6-B), the candidate must submit the evidence to the Commission required by that statute before entering into an obligation to the payee.]

[Option 2: If a candidate uses MCEA funds to pay an individual or entity covered by subsection 1125(6-B), the candidate must provide the evidence required by subsection 1125(6-B) to the Commission at the time the report in which the payment is disclosed is filed with the Commission. The Commission must receive the documentation within one week of the filing of the report.]

The Commission staff shall consider this evidence to determine whether the expenditure meets the requirements of 21-A M.R.S.A. § 1125(6-B). After requesting any additional evidence necessary, the staff will notify the Commission of any [proposed] expenditures which do not clearly meet the requirements of 21-A M.R.S.A. § 1125(6-B).

### ***Evidence Submitted***

The candidate should provide information that establishes that the [proposed] payee currently is employed by or is engaged in a business that provides the goods or services. The candidate should state the [proposed] price for the goods and services, and include a justification for that amount. In most cases, the justification will include information from the [proposed] payee regarding the usual price for providing such goods and services to other clients. The candidate should also explain how the goods or services are campaign-related.

### ***Reimbursing for Goods or Services Advanced to the Campaign***

If a MCEA candidate or a supporter of that candidate uses personal funds or a personal credit card to pay a vendor for campaign goods or services, the candidate may reimburse the candidate or supporter, provided that the reimbursement occurs in the same campaign finance reporting period as payment to the vendor. This reimbursement is permitted even if the supporter resides in the same household as the candidate.

# Maine Citizens for Clean Elections

P.O. Box 18187, Portland, ME 04112  
www.maineclipselections.org/

(207) 664-0696 (Ann Luther, co-chair)  
(207) 879-7440 (Alison Smith, co-chair)  
info@maineclipselections.org

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June 16, 2008

To: Maine Commission on Governmental Ethics and Election Practices

Re: Proposed Policy on Paying Family Members

Maine Citizens for Clean Elections (MCCE) appreciates the opportunity to comment on the draft memorandum titled, "Policy on Paying Campaign Funds to Family Members."

We appreciate the changes that were made since the first hearing on this proposed policy on April 28, 2008. We remain concerned about the proposed pre-approval process that is contained in this draft.

MCCE believes that the legislature intended this statute to be a very broad ban with only the narrowest of exceptions. We believe that the statute, as drafted, gives good guidance to candidates who may contemplate paying a spouse or other household member. The Commission's proposed requirement that documentation be submitted and approved prior to expenditures being made implies a larger amount of discretion than we believe the legislature intended.

MCCE is concerned that the pre-approval process may result in the Commission being forced to make decisions on yet-to-be-made expenditures with what may prove to be incomplete or misleading information. We believe that this would compromise the Commission's ability to enforce the broad and clear ban that the legislature intended.

We recommend that the policy be amended to eliminate the pre-approval process.

**Wayne, Jonathan**

**From:** Francis Marsano [fmarsano@msn.com]  
**Sent:** Wednesday, April 30, 2008 10:05 PM  
**To:** Michael P. Friedman; Wayne, Jonathan; Lavin, Paul; Gardiner, Phyllis  
**Cc:** Mavourneen Thompson; David Shiah; edyoungblood@verizon.net  
**Subject:** RE: Family Members

I think the draft meets the dictates of the statute and that it will reduce Clean Election Candidates from trying to spend money they should know they should not. It also means there will be Staff review and, hopefully, helpful comments when the matter comes before the Commission.

I also think there will be fewer requests than might be expected. However, I have been wrong before as Attorney Friedman is fond of reminding me.

Francis C. Marsano

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**Subject:** RE: Family Members  
**Date:** Tue, 29 Apr 2008 13:18:24 -0400  
**From:** mfriedman@rudman-winchell.com  
**To:** Jonathan.Wayne@maine.gov; Paul.Lavin@maine.gov; Phyllis.Gardiner@maine.gov  
**CC:** mavourneen@maine.rr.com; dshiah@suscom-maine.net; fmarsano@msn.com; edyoungblood@verizon.net

If that is the interpretation, and it is a reasonable one, then the staff should be involved in the individual requests and not the Commission. I really don't want to see our meeting time used to give provisional approvals.

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**From:** Wayne, Jonathan [mailto:Jonathan.Wayne@maine.gov]  
**Sent:** Tuesday, April 29, 2008 12:36 PM  
**To:** Michael P. Friedman; Lavin, Paul; Gardiner, Phyllis  
**Cc:** Mavourneen Thompson; David Shiah; Francis Marsano; edyoungblood@verizon.net  
**Subject:** RE: Family Members

Thank you. I understood from your comments at the meeting about the Workers Compensation Board that you were against the staff giving a provisional (temporary) approval, but I did not realize that you were against the Commission pre-approving proposed expenditures to family members. I'm sorry that I fully understand your point of view.

I have to say that Paul and I interpreted the phrase "will be made" in "unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made" to mean that the candidate would be under an duty to submit the evidence to the Commission **before** the making an expenditure of Maine Clean Election Act funds to a member of their household. (I've copied the entire 21-A MRSA 1125(6-B) below.) Perhaps I was being too literal.

I'm happy to draft it without pre-approval if that is the preference by the Commission. It might be instructive to see whether any people offering comments believe pre-approval is good policy or is required by the statute. I'm running out to lunch and will try to get input from Phyllis this afternoon.

I will try to make the last sentence in the "normal course" section more clear or I will delete it.

Thank you again.

ENACTED:

**21-A MRSA 1125(6-B). Expenditures as payment to household members.** A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business,

6/20/2008

corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

- A. For a legitimate campaign-related purpose;
- B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

**From:** Michael P. Friedman [mailto:mfriedman@rudman-winchell.com]

**Sent:** Tuesday, April 29, 2008 9:51 AM

**To:** Wayne, Jonathan; Lavin, Paul; Gardiner, Phyllis

**Cc:** Mavourneen Thompson; David Shiah; Francis Marsano; edyoungblood@verizon.net

**Subject:** Family Members

Jonathan,

I have reviewed your second draft. Here are my comments:

**Timing of Submitting Evidence:** This seems to still allow for a provisional approval, now by the Commission rather than the staff. I don't think we should be involved in providing "provisional" guidance. We might be inundated by 100's of candidates seeking to have their spouses, kids, etc involved in their campaigns for a fee. If the candidate is sure of the expenditure, then he/she can defend after the fact if a complaint is made. If not sure, they should look elsewhere for paid staff.

**Evidence Submitted:** This will play off the above. If we do not receive provisional requests we do not need this section

**Normal Course:** Last 2 lines??? An individual will not (or will) ....

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STATE OF MAINE  
COMMISSION ON GOVERNMENTAL ETHICS  
AND ELECTION PRACTICES  
135 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0135

## MEMORANDUM

To: Interested Parties

From: Jonathan Wayne, Executive Director

Date: May 12, 2008

Subject: Opportunity to Comment on Ethics Commission Policy – Payments of Campaign Funds to Members of a Candidate's Family or Household

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At its meeting on June 27, 2008, the Ethics Commission will consider a draft policy regarding candidates who pay campaign funds to family members, pursuant to Chapters 567 and 571 of the Public Laws of 2007. The proposed policy would generally prohibit Maine Clean Election Act candidates from paying public campaign funds to family members with certain exceptions. All candidates paying campaign funds to a family member would be required to disclose the relationship in their campaign finance reports.

Please feel free to comment on any part of the proposed policy. The Commission will consider the policy at its meeting on Friday, June 27, at 9:00 a.m., and you are invited to comment at the meeting. Written and e-mailed comments are also welcome. (My e-mail address is [Jonathan.Wayne@maine.gov](mailto:Jonathan.Wayne@maine.gov).) Your written comments will be most helpful if the Commission receives them no later than Monday, June 16, so that the staff can consider them and the Commission members can read them in advance of the meeting.

If you have any questions, please telephone me at 287-4179. Thank you for your consideration of the proposed amendments.

OFFICE LOCATED AT: 242 STATE STREET, AUGUSTA, MAINE  
WEBSITE: [WWW.MAINE.GOV/ETHICS](http://WWW.MAINE.GOV/ETHICS)

PHONE: (207) 287-4179

FAX: (207) 287-6775

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Ensure Integrity in Financing Publicly Funded Campaigns**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 21-A MRSA §1017, sub-§5**, as amended by PL 2007, c. 443, Pt. A, §16, is further amended to read:

**5. Content.** A report required under this section must contain the itemized accounts of contributions received during that report filing period, including the date a contribution was received, and the name, address, occupation, principal place of business, if any, and the amount of the contribution of each person who has made a contribution or contributions aggregating in excess of \$50. The report must contain the itemized expenditures made or authorized during the report filing period, the date and purpose of each expenditure and the name of each payee and creditor. If the payee is a member of the candidate's household, the candidate must disclose the family relationship in a manner prescribed by the commission. The report must contain a statement of any loan to a candidate by a financial institution in connection with that candidate's candidacy that is made during the period covered by the report, whether or not the loan is defined as a contribution under section 1012, subsection 2, paragraph A. The candidate and the treasurer are jointly and severally responsible for the timely and accurate filing of each required report.

**Sec. 2. 21-A MRSA §1125, sub-§6-B** is enacted to read:

**6-B. Expenditures as payment to household members.** A candidate may not make expenditures using fund revenues to pay the candidate, a member of the candidate's household or a business, corporation or nonprofit entity in which the candidate or a member of the candidate's household holds a significant proprietary or financial interest, unless the candidate submits evidence according to procedures established by the commission that the expenditure will be made:

- A. For a legitimate campaign-related purpose;
- B. To an individual or business that provides the goods or services being purchased in the normal course of their occupation or business; and
- C. In an amount that is reasonable taking into consideration current market value and other factors the commission may choose to consider.

This subsection does not prohibit reimbursement to a member of a candidate's household when made in accordance with this chapter and rules adopted by the commission.

Effective 90 days following adjournment of the 123rd Legislature, Second Regular Session, unless otherwise indicated.

**3. Qualifying contributions.** Participating candidates must obtain qualifying contributions during the qualifying period as follows:

- A. For a gubernatorial candidate, at least 3,250 verified registered voters of this State must support the candidacy by providing a qualifying contribution to that candidate;
- B. For a candidate for the State Senate, at least 150 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate; or
- C. For a candidate for the State House of Representatives, at least 50 verified registered voters from the candidate's electoral division must support the candidacy by providing a qualifying contribution to that candidate.

A payment, gift or anything of value may not be given in exchange for a qualifying contribution. A candidate may pay the fee for a money order that is a qualifying contribution in the amount of \$5 as long as the donor making the qualifying contribution pays the \$5 amount reflected on the money order. Any money order fees paid by a participating candidate must be paid for with seed money and reported in accordance with commission rules. A money order must be signed by the contributor to be a valid qualifying contribution. The commission may establish by routine technical rule, adopted in accordance with Title 5, chapter 375, subchapter 2-A, a procedure for a qualifying contribution to be made by a credit or debit transaction and by electronic funds transfer over the Internet. Records containing information provided by individuals who have made qualifying contributions over the Internet are confidential, except for the name of the individual making the contribution, the date of the contribution, the individual's residential address and the name and office sought of the candidate in whose support the contribution was made.

It is a violation of this chapter for a participating candidate or an agent of the participating candidate to misrepresent the purpose of soliciting qualifying contributions and obtaining the contributor's signed acknowledgement.

**Sec. 12. 21-A MRSA §1125, sub-§12,** as enacted by IB 1995, c. 1, §17, is amended to read:

**12. Reporting; unspent revenue.** Notwithstanding any other provision of law, participating and certified candidates shall report any money collected, all campaign expenditures, obligations and related activities to the commission according to procedures developed by the commission. If a certified candidate pays fund revenues to a member of the candidate's immediate family or a business or nonprofit entity affiliated with a member of the candidate's immediate family, the candidate must disclose the family relationship in a manner prescribed by the commission. Upon the filing of a final report for any primary election in which the candidate was defeated and for all general elections that candidate shall return all unspent fund revenues to the commission. In developing these procedures, the commission shall utilize existing campaign reporting procedures whenever practicable. The commission shall ensure timely public access to campaign finance data and may utilize electronic means of reporting and storing information.